

NO: 4:08-CV-00159-F

Defendant.

ORDER

This Cause comes before the Court upon Plaintiff Big Rock's motion (DE-153) for an order (1) holding Defendant AcuSport in contempt for failing to comply with a June 14, 2011 order of this Court; (2) directing AcuSport to begin a rolling production of remaining documents immediately and complete that production no later than August 26, 2011; and (3) requiring AcuSport to reimburse Big Rock for its costs and fees associated with responding to AcuSport's failure to comply, including its costs and fees associated with the instant motion. For the reasons stated herein, Big Rock's motion is granted in part.

Background

On June 2, 2011, the Court held a hearing on several motions filed in this case, including two motions to compel discovery (DE-113, 115) filed by AcuSport. The Court ordered Big Rock to immediately produce materials connected to the California state litigation. (DE-139, p.4). With regard to the other outstanding document requests, the parties agreed at the hearing that while neither side had produced documents (DE-138, p.29), the parties were engaged “in extensive

discussions back and forth mutually to come up with agreed lists of search terms to search for e-mails and other electronic documents . . . and both sides are off now conducting their searches and collecting documents.” (*Id.* at p.20). The Court then requested both parties submit “proposed schedules for rolling out their documents.” (*Id.* at 25).

On June 6, 2011, the parties submitted a joint status report to the Court proposing a deadline of August 1, 2011 for the production of documents and materials resulting from the key word searches agreed to by the parties. (DE-137, p.3). In the resulting order filed June 14, 2011, the Court stated that “[t]he parties further agree to make good faith efforts to make a rolling production of all documents and materials resulting from key word searches agreed to by the parties that will be complete no later than August 1, 2011.” (DE-139, p.4).

Big Rock filed the instant motion on August 10, 2011, alleging that AcuSport has failed to produce any documents responsive to the key word searches agreed to by the parties. Big Rock seeks an order requiring the immediate production of the relevant documents and holding AcuSport in contempt for its failure to comply with the June 14, 2011 order.

Discussion

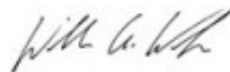
Big Rock asserts that, while it timely completed its production of documents and materials responsive to the key word searches agreed to by the parties, AcuSport has not produced a single responsive document and that “[o]nly after repeated queries from Big Rock about the status of its document production, did AcuSport inform Big Rock on August 5, 2011 that it was ‘taking longer than . . . anticipated due to unforeseen delays’ and that it ‘anticipate[d] that a rolling production of this data will begin the week of August 29, 2011.’” [DE-153, p.2]. Big Rock contends that AcuSport has thereby failed to comply with the June 14, 2011 order of the Court requiring production of all documents and materials resulting from key word searches agreed to by the

parties to be completed no later than August 1, 2011. Big Rock argues that sanctions for contempt are therefore warranted to ensure compliance with the June 14, 2011 order.

AcuSport responds that the order merely required good faith efforts by the parties to complete production by August 1st, which AcuSport contends it has made. AcuSport asserts it has been working diligently and “has informed Big Rock that it will produce the relevant documents beginning in late August.” (DE-156, p.2).

AcuSport has seriously misapprehended the June 14, 2011 order of the Court. The deadlines for production of documents were submitted by the parties and adopted by the Court. Big Rock has complied with the August 1, 2011 completion deadline; it is past time for AcuSport to do the same. However, as the undersigned believes that AcuSport’s failure to comply was not willful, a finding of contempt is not warranted and sanctions will not be imposed at this time. Big Rock’s motion (DE-153) is therefore GRANTED IN PART and DENIED IN PART. AcuSport is hereby ORDERED to complete its production of all documents and materials resulting from key word searches agreed to by the parties by Tuesday, September 6, 2011. Should AcuSport fail to comply with the September 6th deadline, an order to show cause why it should not be held in contempt will issue.

DONE AND ORDERED in Chambers at Raleigh, North Carolina on August 31, 2011.



WILLIAM A. WEBB
UNITED STATES MAGISTRATE JUDGE